

## **Private Property Debris Removal**

Reimbursement for removal of debris from private property can only be performed under specific circumstances and only with prior state and/or federal approval.

### **State Regulations for Private Property Debris Removal**

Under state regulations, debris removal from private property is reimbursable only when there is an immediate threat to life, public health and safety.

- Title 19, Section 2925 (2) (A-C)) does allow for the removal of debris under the following:
  - (2) For purposes of this program, the removal of debris from private property shall be reimbursed only when there is an immediate threat to public health and safety. In a case where reimbursement for debris removal from private property is authorized by the director, the following requirements shall apply, unless waived in part or full by the director:
    - (A) The property owner must remove all disaster-related debris from the property to the curb or public right-of-way;
    - (B) The local agency must obtain a signed statement from the property owner to the effect that the property owner does not have insurance covering the removal of the disaster-related debris; and,
    - (C) The local agency must have a signed statement from the property owner giving the local agency the right of entry and absolving the local agency and the state of any liability relative to removal.

### **Federal Regulations for Private Property Debris Removal**

(Stafford Act Sections 403 and 407 and 44 CFR 206.224(b)) provide the authority to fund eligible applicants to remove debris from private property. This work may only be eligible when:

- The disaster caused very severe and widespread damage.
- The removal is necessary to eliminate an immediate threat to life, public health and safety or to improve public or private property, or to ensure the economic recovery of the affected community to the benefit of the community-at-large.
- An eligible applicant, such as a municipal or county government, performs the work.
- The private property owner has provided all insurance information.
- It is pre-approved by the Director and/or Federal Disaster Recovery Manager (DRM).

- Required legal documents are in place:
    - Insurance documents;
    - Hold Harmless Agreement; and
    - Right-of-Entry Agreement.
  - In federally declared events, applicants and property owners must be aware that only FEMA makes eligibility determinations regarding removal of debris from private property. Not all actions that may be taken by the local governments are eligible for FEMA assistance.
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### **Demonstrating a Threat**

An applicant must demonstrate that removal of debris on private property is required to reduce a threat.

- A *resolution* after a disaster by an applicant that debris on private property constitutes a threat to public health and safety does not in itself make the debris removal eligible.
  - The applicant should submit for review and approval specific legal requirements for declaring the existence of the threat.
    - ♦ A damaged structure may be a public health and safety hazard if it could be condemned as such, pursuant to the provisions of an applicant's ordinance related to condemnation of damaged structures. A qualified individual, such as a certified building inspector, must make this determination.
    - ♦ A public health hazard may exist if such a determination is made pursuant to the provision of an applicant's ordinance related to public health. An individual qualified to do so, such as a public health official, must make such a determination.
- The determination of work being required to ensure economic recovery must be carefully reviewed.
  - Use of this criterion is normally restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.

## **Ineligible Debris**

Only disaster-related debris that requires removal to reduce or eliminate an immediate threat is eligible. The following is not eligible for reimbursement:

- Privately owned vehicles, whether or not insured.
- Old white goods located on private property awaiting proper disposal.
- Old tires, batteries, or any equipment/material located on private property awaiting proper disposal.
- Damaged swimming pools, basements and foundations. If it is determined that a public safety hazard exists, FEMA may reimburse the cost of filling these structures.
- Reconstruction debris, sometimes called construction rubble, resulting from reconstruction activities. Removal should be a part of the renovation contract and is to be removed by the contractor.
- Debris that does not pose a threat is not eligible for removal. For example, miscellaneous debris, such as minor vegetation and rubble, is not eligible. Raking of private property to ensure glass and nails are removed is not eligible.
- If an eligible applicant damages private property as a result of eligible debris removal activities, repairs to the property are not eligible unless the damage results in a health or safety risk. Similarly, if private property is damaged by a Federal agency engaged in disaster response activities, the Federal government is not liable for repairs to that property.

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## **Eligibility Issues**

### **Mobile Homes**

During many disasters there may be a large number of mobile homes totally demolished.

- The eligibility for mobile home removal should be evaluated as for any other residential structure - removal may be eligible if a threat can be demonstrated – but there are some unique aspects to the units themselves.
  - o Before demolition begins, the applicant should make arrangements to be sure remaining personal items, furniture, etc. that may remain in the units are removed.
  - o Check the units for asbestos and lead paint, and any other household hazardous waste.
  - o Units may need to be crushed or taken apart – few landfills will accept the units intact.

- o Caltrans and DOT may have regulations relating to hauling demolished mobile homes on State/federal highways.
- o Consider salvage of the metal components.

### **Trees, Limbs and Stumps**

- Hazardous trees, limbs and stumps on public property within or adjacent to improved or publicly used space, and on private property that meet criteria of posing a threat, may be eligible for removal. Examples include:
  - o Trees alongside public roadways.
  - o Trees within a naturalized area of public parks or golf courses.
  - o Trees within private property posing a threat to health and public safety or to damage to residences.
- Hazardous trees that are unstable and leaning into the areas used by the public are eligible for removal. Normally, trees requiring removal are flush cut to the ground.
- A tree with more than 50% of the tree crown destroyed or damaged, a split trunk, or broken branches that expose the heartwood, or a tree that has been felled or uprooted is eligible for removal, especially if it is in a location approximate to or within public-use areas.
  - o If an applicant chooses to save a tree that has any conditions described above that justify its removal, the expense is the applicant's.
- Hazardous limbs are also eligible for removal. Hazardous limbs considered to pose a threat are those that are still hanging in the tree and are threatening a public-use area, such as a trail, sidewalk, road or golf cart path, or other improved and maintained property.
- Removal of fallen trees in a forested or wilderness area is not normally eligible.
- Removal of cut trees from subdivisions under development or off the right-of-way in rural areas is typically not eligible, as this condition generally does not pose an immediate threat.
- Reimbursement for stump removal is extremely limited.
  - o Normally, reimbursement is limited to removing stumps that have been uprooted, and are located in an area where they would be a safety hazard. If a tree has been broken, instead of uprooted, the "stump hazard" is removed by cutting the tree at ground level.

**Note:** Angora Fire – 8,552 tons of trees were salvaged for lumber.

## **Animal Removal**

- Disposal of farm and companion animals present unique challenges.
- Local emergency managers need to be involved if extensive numbers of dead animals are found.
- Because of potential health issues, disposal of dead animals needs to be addressed quickly.
- Disposal methods, burning or burying, needs to be coordinated with appropriate environmental agencies.
- A specialty contractor may be needed to appropriately pick-up, haul and dispose of the animals.

**Note:** California Dept. of Resources Recycling & Recovery (CalRecycle) has lists of renders for various areas on their website ([www.calrecycle.ca.gov](http://www.calrecycle.ca.gov)).

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## **Demolition**

### **State Regulations**

Under Title 19, § 2930(4), the director under the following standards approves demolition of a damaged public facility or privately owned building:

(A) The local agency must clearly possess the legal authority and responsibility to demolish the damaged facility. The local agency must also show that such demolition does not constitute a “taking” which would require the payment of compensation to the property owner;

(B) The local agency requesting approval of building demolition of privately owned-buildings must be able to demonstrate that the property owner has no other source of funding to pay for structure demolition;

(C) The local agency must have inspected each building and determined it to be a health or safety hazard. The local agency must have a certification to this effect signed by the appropriate agency official;

(D) The local agency must have a signed statement from the property owner to the effect that the property owner does not have insurance covering the damage or the demolition of the building;

(E) The local agency must have a signed statement from the property owner giving the local agency the right of entry and absolving the local agency and the state of any liability relative to demolition and removal;

(F) The local agency must also comply with any other applicable state or federal health and safety regulation, law, or general requirements; and,

(G) Eligibility is limited to the cost of demolishing designated buildings to the top of the foundation, removal and hauling debris to the waste-site, and back filling of basements to a safe condition.

## **Federal Regulations**

Under Sections 403 and 407 of the Stafford Act allows for the demolition of unsafe public or private structures that pose an immediate threat to life, property, or public health and safety.

- The following is a summary of the key items of the FEMA Policy: Demolition of Private and Public Facilities (FEMA 9523.4) November 9, 1999, included in the Policies Section, and other references.
  - o Public and PNP Eligible Facilities.
    - ♦ Section 403 requires that the structures must be damaged by the disaster.
    - ♦ The structures must be determined to be unsafe and pose an immediate danger to the public. This determination must be made by local officials and verified by State and Federal officials.
    - ♦ Work must be completed within Emergency Work deadlines (44 CFR 206.204 – 6 months plus extensions).
    - ♦ Additionally, Section 407 allows for demolition in the public interest, ensuring economic recovery, but this only applies when the first two criteria above are met to the satisfaction of the Regional Director, and the structures have been uninhabited since the major disaster. The timeline for emergency work completion does not govern this authority.
  - o Private Structures.
    - ♦ The structures must meet the first three criteria defined above for Public and PNP Facilities.
    - ♦ Liability and legal permission requirements must be met.
    - ♦ Slabs or foundations, broken or intact, generally do not present a health or safety hazard to the general public. Slabs removed primarily for reconstruction are not eligible.
    - ♦ Individuals and private organizations (non PNPs) will not be reimbursed for their efforts on their own property.

- o For health and safety reasons, the following demolition costs are eligible:
  - ♦ Capping wells.
  - ♦ Pumping and capping septic tanks.
  - ♦ Filling in basements and swimming pools.
- o Not eligible activities include:
  - ♦ Concrete slabs removed for reconstruction purposes, even when brought to the curbside.
  - ♦ Removal or covering of pads and driveways.
  - ♦ Structures condemned as safety hazards before the disaster.
  - ♦ Habitable, but not yet damaged, structures even when they are in serious danger of total destruction (for example, on a failing slope).
- o Section 404 Hazard Mitigation.
  - ♦ When part of the Section 404 Hazard Mitigation buyout and relocation project, the removal of substantially damaged structures including slabs, driveways, fencing, garages, sheds and similar appurtenances are eligible.
- o Insurance must be considered.
- All work must be reviewed in accordance with environmental, historic and other Federal laws.

### **Other Considerations**

Demolition of a structure is not always the most cost-effective health and safety alternative. For “attractive nuisances” where structural integrity has not been compromised, cleaning and securing the facility may not be the best alternative.

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### **Curbside Pickup**

Disaster-related debris from private property must be brought to the curbside and collected by an eligible applicant.

- Construction and demolition materials from repairs and reconstruction should not be placed at curbside.
- Items such as grass-clippings, household garbage, automobile parts, are not eligible.

- Residents should not mix normal garbage with disaster debris. Normal garbage pickup schedules should resume as soon as possible.
  - Segregation of the types of debris will make the process go smoother and faster.
    - o Applicants may be asked to separate their debris into the following categories;
      - ♦ Woody debris and yard waste;
      - ♦ Household waste (damaged personal goods);
      - ♦ Household Hazardous Waste (HHW); and
      - ♦ Construction and Demolition (C&D) waste (removed by the homeowner, not as a result of reconstruction).
  - The State, FEMA and/or the applicant should monitor the pickup activities to ensure that eligible materials are being collected and unnecessary mixing of debris does not occur.
    - o The local agencies should work with their State and Federal counterparts to establish deadlines for debris pickup. The residents should be informed as soon as possible of the criteria for pickup, schedule and deadlines.
  - Debris can be removed directly off private property under special circumstances. These instances must be documented.
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### **Hazardous/Toxic Waste**

Major hazardous and toxic waste components are generally the responsibility of the Department of Toxic Substances Control and the Environmental Protection Agency.

#### **State**

The Department of Toxic Substances Control regulates the following within the State:

- Regulate asbestos. (This could also fall under the Air Resources Board's jurisdiction, or OSHA's depending on whether the asbestos is being disposed of or ground up.)
- Regulate lead (primarily lead based paint on wood and metal) and household hazardous waste.
- Regulate cleanup on hazardous materials.



## **Federal**

FEMA regulates the following:

- The PAO will coordinate with OES and FEMA Headquarters at the beginning of a disaster to determine if there have been any agreements with the EPA on addressing HAZMAT for the specific disaster.
    - For example, FEMA HQ may determine if retrieving and disposing of orphan drums and barrels will be funded by FEMA or through the EPA.
  - FEMA generally will fund the removal and disposal of Household Hazardous Waste.
  - FEMA may provide technical assistance to States on disposal methods.
  - Activities related to long-term cleanup are generally not eligible for FEMA funding.
  - State/Tribal/local costs for long-term clean-up measures.
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## **Insurance**

In many instances, debris removal for both public and private activities is covered by conventional insurance.

- Check policies to determine coverage.
- Homeowner's insurance policies often cover structures, fences, and playground equipment.
  - Usually does not cover vegetative debris.
  - Homeowners should consider using insurance funds to pay for the removal of debris that is not eligible for reimbursement. This can include:
    - ♦ Concrete slabs
    - ♦ Foundations
    - ♦ Sidewalks
- The responsibility for collecting the insurance coverage, whether it is for public or private activities, rests with the applicant.
- The right-of-entry and release from liability document should include a requirement for the homeowner to forward insurance proceeds to the applicant.

**Note:** Angora Fire – as of October 2008, over \$4.2 million dollars has been recovered under the El Dorado County's Insurance Recovery Plan.

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### **Key Points**

Below are several key points to remember when considering private property debris removal. While this information may be repetitive, it is imperative that the applicant understand that private property debris removal is not simply a matter of being a good idea; local governments must recognize the amount of time, responsibilities and effort that they will need to contribute in order to ensure a successful private property debris removal program.

- The Applicant must document that the debris is a threat to the public health and safety, (if FEMA gets involved, they will want to see test results so this must be done immediately, not when FEMA declares a federal emergency/declaration),
- The Applicant must pursue insurance recovery from the property owners for debris removal,
- The Applicant must monitor the contractors removing the debris to ensure that only eligible debris is removed and that only eligible works is being done,
- The Applicant must have a right-of-entry form from the property owner prior to beginning the debris removal work,
- The Applicant must ensure that those property owners who did not sign up for the debris removal program, remove the debris in a timely manner and that if they don't, the Applicant must take appropriate action to ensure that the debris is removed (such as abatement) and that those costs are not reimbursable,
- Hazardous trees can be removed IF they pose a threat to the public health and safety, this must be documented before the tree is removed, and lastly;
- If FEMA does not get involved the Applicant will be liable for the **entire 25%** cost share for any type of debris removal program.